

APPEAL NO. 043152
FILED JANUARY 27, 2005

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was convened on October 14, 2004. The parties attempted to reach a settlement of the pending issues regarding entitlement of supplemental income benefits (SIBs) but Texas Workers' Compensation Commission (Commission) records reflect that the settlement was rejected on October 27, 2004. On November 22, 2004, the hearing officer issued a Commission Order for Attorney's Fees (order) covering services from February 8 through November 1, 2004. The order approved 45 hours out of the 46 hours requested for attorney fees and 3.5 hours out of the 3.5 hours requested for legal assistant time for a total approved fee of \$6,925.00. The appellant (carrier) appeals, arguing that since the settlement was rejected by the Commission the entitlement to the second, third, fifth, sixth, and seventh SIBs quarters remain in dispute and therefore no attorney fees should be payable at this time. The appeal file does not contain a response from the respondent (claimant), or the claimant's attorney.

DECISION

The hearing officer's order awarding claimant's attorney fees in the amount of \$6,925.00 is vacated.

The carrier represents in its appeal that the settlement agreement was rejected due to a pending lawsuit filed in district court and contends that this lawsuit is in the process of being non-suited and upon completion of the non-suit, the parties will resubmit a settlement agreement. Section 408.147(c) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 152.1(f) (Rule 152.1(f)) provide that an attorney for an employee who prevails when a carrier contests a Commission determination of eligibility for SIBs shall be eligible to receive a reasonable and necessary attorney's fee, including expenses. The carrier correctly points out that since the settlement was rejected the SIBs quarters at issue remain in dispute and therefore no attorney's fees should be payable at this time. Therefore, we vacate the award of attorney's fees entered by the hearing officer to claimant's attorney in the amount of \$6,925.00.

Once the underlying issues in dispute have been resolved, the claimant's attorney may submit a new request for attorney fees in the form and manner prescribed by the applicable statutes and Commission rules. If the claimant's attorney has been paid the attorney fees awarded, or any portion thereof, by the hearing officer's Order dated November 22, 2004, he is ordered to reimburse the carrier. See Rule 152.3(g)(h).

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. RUSSELL OLIVER, PRESIDENT
221 WEST 6TH STREET, SUITE 300
AUSTIN, TEXAS 78701.**

Margaret L. Turner
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge